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In the Supreme Court of the United States

OCTOBER TERM, 1960

JORGE GABRIEL ROCHA, JOAO DA PAIXAO ANDRADE, MANUEL CORREIA DALUZ, JOSE DA SILVA DALUZ, FRANCISCO DASILVA RODRIGUES, MANUEL DASNEVES VIRISSIMO, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ARCHIBALD COX,
Solicitor General,
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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. B, pp. 45–64) is not yet reported. The opinion of the district court (Pet. App. A, pp. 11–44) is reported at 182 F. Supp. 479.

JURISDICTION

The judgment of the court of appeals was entered on March 2, 1961 (Pet. App. D, p. 67). On March 28, 1961, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to and including May 1, 1961. The petition for a writ of certiorari

was filed on April 28, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether Congress intended 18 U.S.C. 1546, which penalizes false swearing in order to gain admittance into the United States, to have effect outside the United States.

2. Whether Congress had the constitutional power to enact 18 U.S.C. 1546.

STATUTES INVOLVED

18 U.S.C. 1546 provides in pertinent part:

> Whoever knowingly * * * falsely makes any immigrant * * * visa, permit, or other document required for entry into the United States, or * * * uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, or document, knowing it to be * * * falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or
>
> * * * * * *
>
> Whoever knowingly makes under oath any false statement with respect to a material fact in any * * * document required by the immigration laws or regulations * * *—
>
> Shall be fined * * * or imprisoned * * *, or both.

22 U.S.C. 1203 provides as follows:

> Every secretary of embassy or legation and consular officer is authorized, whenever he is required or deems it necessary or proper so to do, at the post, port, place, or within the limits of his embassy, legation, or consulate, to ad-

minister to or take from any person an oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to do within the United States. Every such oath, affirmation, affidavit, deposition, and notarial act administered, sworn, affirmed, taken, had, or done, by or before any such officer, when certified under his hand and seal of office, shall be as valid, and of like force and effect within the United States, to all intents and purposes, as if administered, sworn, affirmed, taken, had or done, by or before any other person within the United States duly authorized and competent thereto. If any person shall willfully and corruptly commit perjury, or by any means procure any person to commit perjury in any such oath, affirmation, affidavit, or deposition, within the intent and meaning of any Act of Congress now or hereafter made, such offender may be charged, proceeded against, tried, convicted, and dealt with in any district of the United States, in the same manner, in all respects, as if such offense had been committed in the United States, before any officer duly authorized therein to administer or take such oath, affirmation, affidavit, or deposition, and shall be subject to the same punishment and disability therefor as are or shall be prescribed by any such act for such offense; and any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal and signature of the officer administering or taking the same in testimony thereof, shall be admitted in evidence without proof of any such seal or signature being genuine or of the official char-

> acter of such person; and if any person shall forge any such seal or signature, or shall tender in evidence any such document with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be deemed and taken to be guilty of a misdemeanor and on conviction shall be imprisoned not exceeding three years nor less than one year, and fined in a sum not to exceed $3,000, and may be charged, proceeded against, tried, convicted, and dealt with therefor in the district where he may be arrested or in custody.

18 U.S.C. 3238 provides as follows:

> The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought.

STATEMENT

Petitioners were each convicted in the United States District Court for the Southern District of California of a violation of 18 U.S.C. 1546 in that each, with respect to his claim to a right of entry as a non-quota immigrant, falsely swore before an American diplomatic or consular officer in a designated Latin American country that he was married to an American citizen. Each was sentenced to pay $250, with sentence suspended and probation granted for five years on various conditions, including one that the alien voluntarily depart and remain outside the United

States unless given lawful permision to enter. On appeal the convictions were affirmed.[1]

No issue is raised as to the sufficiency of the evidence, the sole question being the validity of applying the statute to false statements made by aliens before American consular officials in foreign countries. The indictments were returned after petitioners had entered the United States in the Southern District of California.

ARGUMENT

Both courts below properly ruled that, by 18 U.S.C. 1546, *supra*, p. 2, Congress intended to subject to punishment aliens in the United States who had made false statements under oath to American officials outside the United States with respect to documents required under the immigration laws. There are no decisions to the contrary.[2] Review by this Court is not warranted.

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[1] Petitioners' joint conviction for conspiracy was reversed on the ground that separate conspiracies had been improperly joined in one count.

[2] In *United States* v. *Archer*, 51 F. Supp. 708 (S.D. Cal.), the court upheld the constitutionality of the statutory predecessor of 22 U.S.C. 1203, *supra*, pp. 2–4; in *United States ex rel. Majka* v. *Palmer*, 67 F. 2d 146 (C.A. 7), and *United States ex rel. Boraco* v. *Schotfeldt*, 109 F. 2d 106 (C.A. 7), the making of false statements under oath to American officials abroad for purposes of obtaining travel documents was held to be a valid basis for deportation; and in *United States* v. *Flores-Rodriguez*, 237 F. 2d 405 (C.A. 2), and *Chin Bick Wah* v. *United States*, 245 F.

ized by statute since 1856 (22 U.S.C. 1203),[3] the legal force and effect of such authentication is necessarily dependent upon a power to punish for abuses.

The suggestion that the exercise of such jurisdiction impinges upon the sovereignty of other nations or is a violation of international law is without substance. Basically, only the interests of the United States are involved when a person makes a false statement to a United States representative abroad in order to gain unlawful admission to the United States (see *supra*, p. 7). There is thus no reason why the United States should not be able to punish persons who perpetrate a fraud upon it which is detrimental to its interests if and when the offenders come within its territorial jurisdiction. Cf. *Strassheim* v. *Daily*, 221 U.S. 280. Section 24 of the American Law Institute's *Restatement of Foreign Relations* (Tentative Draft No. 2) reads:

> SEC. 24. *Protection of Governmental interests:* A state has jurisdiction to prescribe rules governing the counterfeiting of its seals and currency, or *falsification of its public records,* by any person in any territory, and to enforce

[3] The power is fairly implied by various provisions of the Constitution. The President is authorized to appoint diplomatic and consular officials (U.S. Const., Art. II, Sec. 2), while Congress is empowered to regulate commerce with foreign nations, regulate naturalization and to make all laws necessary and proper for carrying out the other powers granted to it or to any officer of the government (U.S. Const., Art. I, Sec. 8). The administration of oaths by consular officials is certainly a proper incident to the powers normally exercised by such officers.

such rules if the offender is found in its territory. [Emphasis added.]

Comment (*b*) thereunder gives as an example that perjury before diplomatic officers is punishable in the United States courts, under 22 U.S.C. 1203. See also *Research in International Law, Part II, Jurisdiction with Respect to Crime,* 29 Am. J. Int. L. Supp. 435, 561 (1935).

Broad statements sometimes made to the effect that criminal jurisdiction must be based either upon control of the territory where the offense was committed or control of the person as a citizen should be viewed in the context of the particular situation. In *The Apollon,* 9 Wheat, 361, relied upon by petitioner, American officials seized a French ship in Spanish waters upon the assumption that the cargo was going to be smuggled into the United States. This act was unquestionably an invasion of Spanish sovereignty and was condemned by the Court as such. In *American Banana Co.* v. *United Fruit Co.,* 213 U.S. 347, the Government attempted to apply the sanctions of the Sherman Anti-Trust Act against alleged monopolistic practices in Central America. Since, however, the practices were entirely legal under local law, the Court denied relief, but pointed out that, in cases immediately affecting national interests, our government may take action even though the alleged criminal acts may have been done within another recognized jurisdiction.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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